



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1996

Mr. Donald W. Allee
Law Offices of Donald W. Allee
801 Nolana, Suite 315
McAllen, Texas 78504

OR96-1741

Dear Mr. Allee:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100760.

The City of Pharr (the "city") received a request for a copy of the resignation letter from the former city manager, Pete Sepulveda, Jr. You have submitted a copy of the resignation letter to this office for review. You contend that the letter is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code.

Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The documents you submitted to this office indicate that the city is engaged in settlement negotiations with Mr. Sepulveda through his attorney. You state that "although the City of Pharr has accepted Mr. Sepulveda's resignation, the terms of his departure have not been resolved." You have not explained how the resignation letter relates to or reveals any of the "terms of [Mr. Sepulveda's] departure" that the city is negotiating.

Furthermore, you have not demonstrated that the city reasonably anticipates litigation relating to these settlement negotiations as required by section 552.103(a). *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 511 (1988) at 2. Thus, the resignation letter is not excepted from disclosure under section 552.103(a).

You state that the letter "contains allegations against members of the Commission of the City of Pharr and in particular, charges against City Commissioner Diana Serna, that if made public, would be highly embarrassing to Commissioner Serna as well as to other members of the City Commission." You also claim that "the allegations contained in the letter place Commissioner Serna and the other members of the City Commission in a false light." For these reasons, you believe that the letter is excepted from disclosure under section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Regarding your claim that the letter is protected on the basis of false-light privacy, we note that false light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body may not withhold information under section 552.101 merely because it might place a person in a false light. See Open Records Decision No. 579 (1990). However, section 552.101 does except from disclosure information that is made confidential by the doctrine of common-law privacy.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The information in the resignation letter is neither highly intimate nor embarrassing. Furthermore, information about the qualifications of public employees and officials, such as Mr. Sepulveda and Commissioner Serna, is of legitimate concern to the public. Open Records Decision Nos. 542 (1990), 470 (1987), 467 (1987). Thus, the letter is not excepted from disclosure under section 552.101 as information made confidential by common-law privacy.

You also indicate that "the letter in question will be made a part of Mr. Sepulveda's personnel file," and that the letter should, therefore, be excepted from disclosure pursuant to section 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). We have already determined that the doctrine of

common-law privacy does not protect the letter from disclosure. Consequently, section 552.102 does not except the letter from required public disclosure.

Finally, you contend that section 552.107 excepts the letter from disclosure. Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.*

Because you represent the city, Mr. Sepulveda's adversary in this matter, it is unclear to us why you have invoked section 552.107 for Mr. Sepulveda's resignation letter. Mr. Sepulveda voluntarily submitted, and thereby disclosed the contents of, the letter to the city. The resignation letter does not reflect the confidential communications of a city official or the legal advice or opinion of a city attorney. Accordingly, we conclude that the letter is not excepted from disclosure under section 552.107.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 100760

Enclosures: Submitted documents

cc: Mr. Maro Robbins
Staff Reporter
The Monitor
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(w/o enclosures)